

§ 270.0-5

(d) Notwithstanding any particular provision permitting incorporation by reference, no registration statement, application or report shall incorporate by reference any exhibit or financial statement which:

(1) Has been withdrawn, or

(2) Was filed in connection with a registration statement under the Act, or a registration on a national securities exchange, which has ceased to be effective, or

(3) Is contained in a registration statement or report subject, at the time of the incorporation by reference, to pending proceedings under section 8(b) or 8(d) of the Securities Act of 1933, section 8(e) of the Act, or to an order entered under any of those Sections, or

(4) If it is a document that has been filed in paper with respect to an electronic filer under a temporary hardship exemption (§ 232.201 of this chapter) and an electronic format copy has not been submitted.

(e) Notwithstanding any particular provision permitting incorporation by reference, the Commission may refuse to permit such incorporation in any case in which in its judgment such incorporation would render the registration statement application, or report incomplete, unclear, or confusing.

[Rule N-4, 9 FR 338, Jan. 8, 1944. Redesignated at 14 FR 2761, May 26, 1949, as amended at 29 FR 2421, Feb. 13, 1964; 58 FR 14860, Mar. 18, 1993; 60 FR 32825, June 23, 1995; 76 FR 71877, Nov. 21, 2011]

§ 270.0-5 Procedure with respect to applications and other matters.

The procedure herein below set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hear-

17 CFR Ch. II (4-1-12 Edition)

ing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as of course, following the expiration of the period of time referred to in paragraph (a) of this section, unless the Commission thereafter orders a hearing on the matter.

(c) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of an interested person or (2) upon its own motion.

[38 FR 23325, Aug. 29, 1973, as amended at 61 FR 49961, Sept. 24, 1996]

§ 270.0-8 Payment of fees.

All payment of fees shall be made by wire transfer, or by certified check, bank cashier's check, United States postal money order, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

[73 FR 6014, Feb. 1, 2008]

§ 270.0-9 [Reserved]

§ 270.0-10 Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.

(a) *General.* For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.) and unless otherwise defined for purposes of a particular rulemaking, the term *small business* or *small organization* for purposes of the Investment Company Act of 1940 shall mean an investment company that, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. For purposes of this section:

(1) In the case of a management company, the term *group of related investment companies* shall mean two or more

Securities and Exchange Commission

§ 270.2a-1

management companies (including series thereof) that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) Either:

(A) Have a common investment adviser or have investment advisers that are affiliated persons of each other; or

(B) Have a common administrator; and

(2) In the case of a unit investment trust, the term *group of related investment companies* shall mean two or more unit investment trusts (including series thereof) that have a common sponsor.

(b) *Special rule for insurance company separate accounts.* In determining whether an insurance company separate account is a *small business* or *small entity* pursuant to paragraph (a) of this section, the assets of the separate account shall be cumulated with the assets of the general account and all other separate accounts of the insurance company.

(c) *Determination of net assets.* The Commission may calculate its determination of the net assets of a group of related investment companies based on the net assets of each investment company in the group as of the end of such company's fiscal year.

[63 FR 35514, June 30, 1998]

§ 270.0-11 Customer identification programs.

Each registered open-end company is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation at 31 CFR 103.131, which requires a customer identification program to be implemented as part of the anti-money laundering program required under subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. Where 31 CFR 103.131 and this chapter use different definitions for the same term, the definition in 31 CFR 103.131 shall be used for the purpose of compliance with 31 CFR 103.131. Where 31 CFR 103.131 and this chapter require the same records to be preserved for different periods of time, such records

shall be preserved for the longer period of time.

[68 FR 25146, May 9, 2003]

§ 270.2a-1 Valuation of portfolio securities in special cases.

(a) Any investment company whose securities are qualified for sale, or for whose securities application for such qualification has been made, in any State in which the securities owned by such company are required by applicable State law or regulations to be valued at cost or on some other basis different from that prescribed by clause (A) of section 2(a)(41) of the Act for the purpose of determining the percentage of its assets invested in any particular type or classification of securities or in the securities of any one issuer, may, in valuing its securities for the purposes of sections 5 and 12 of the Act, use the same basis of valuation as that used in complying with such State law or regulations in lieu of the method of valuation prescribed by clause (A) of section 2(a)(41) of the Act.

(b) Any open-end company which has heretofore valued its securities at cost for the purpose of qualifying as a "mutual investment company" under the Internal Revenue Code, prior to its amendment by the Revenue Act of 1942, shall henceforth, for the purposes of sections 5 and 12 of the Act, value its securities in accordance with the method prescribed in clause (A) of section 2(a)(41) of the Act unless such company is permitted under paragraph (a) of this section to use a different method of valuation.

(c) A registered investment company which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this section, shall state in its registration statement filed pursuant to section 8 (54 Stat. 803; 15 U.S.C. 80a-8) of the Act, or in a report filed pursuant to section 30 (54 Stat. 836; 15 U.S.C. 80a-30) of the Act, the method of valuation adopted and the facts which justify the adoption of such method. A registered investment company which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this section, unless it shall have adopted such method for the purpose or partly for the